



GOVERNMENT ACCOUNTABILITY OFFICE

Notice of Methodology for Estimating Lump Sum Catch-up Payments to Eligible 9/11 Victims, 9/11 Spouses and 9/11 Dependents; Request for Comment

AGENCY: U.S. Government Accountability Office (GAO).

ACTION: Notice of methodology; request for comment.

SUMMARY: GAO is now accepting comments on our methodology for estimating potential lump sum catch-up payments to certain 9/11 victims, 9/11 spouses, and 9/11 dependents who have submitted eligible claims for payment from the United States Victims of State Sponsored Terrorism Fund. GAO is conducting an audit and publishing this notice pursuant to the Sudan Claims Resolution Act.

Comments should be sent to the e-mail address below.

DATES: Interested persons are invited to submit comments on or before April 26, 2021.

ADDRESSES: Submit comments to FundPaymentComments@gao.gov or in writing to Mr. Charles Michael Johnson, Jr. at 441 G Street, NW Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: Charles Michael Johnson Jr. at (202) 512-7500 or JohnsonCM@gao.gov if you need additional information. For general information, contact GAO's Office of Public Affairs, 202-512-4800.

SUPPLEMENTARY INFORMATION: Pursuant to Section 1705 of the Sudan Claims Resolution Act, GAO is conducting an audit and publishing this notice of our methodology for estimating potential lump sum catch-up payments to 9/11

victims, 9/11 spouses, and 9/11 dependents¹ who have eligible claims for payment from the United States Victims of State Sponsored Terrorism Fund (Fund), established in 2015 by the Justice for United States Victims of State Sponsored Terrorism Act (Terrorism Act).² While the Terrorism Act, as amended, contains a provision for us to estimate these catch-up payments, it does not currently authorize such catch-up payments to be made. The Fund is administered by a Special Master appointed by the Attorney General and supported by Department of Justice personnel.³

For purposes of the Fund, the term “claim” generally refers to a claim based on compensatory damages awarded to a United States person in a final judgment issued by a United States district court under State or Federal law against a foreign state that has been designated a state sponsor of terrorism and arising from acts of international terrorism.⁴ In general, a claim is determined eligible for payment from the Fund if the Special Master determines that the judgment holder (referred to as a “claimant”) is a United States person, that the claim at issue meets the definition of claim above, and that the claim was submitted timely.⁵ The first round of payments was distributed in early 2017 and the second round in early 2019.⁶ As of March 2021, the Fund had allocated \$1.075 billion for third-round payments and was in the process of distributing payments on a rolling basis.⁷

¹ See 34 U.S.C. 20144(j)(10)-(14) (defining the terms “9/11 victim,” “9/11 spouse,” and “9/11 dependent,” among others); see also 28 C.F.R. 104.2, 104.3.

² Pub. L. 116-260, div. FF, tit. XVII, 134 Stat. 1182, 3293-3294, amending Pub. L. 114-113, div. O, tit. IV, 404, 129 Stat. 2242, 3007-3017 (classified as amended at 34 U.S.C. 20144(d)(4)(C)).

³ See 34 U.S.C. 20144(b)(1).

⁴ 34 U.S.C. 20144(c)(2).

⁵ 34 U.S.C. 20144(c)(1).

⁶ The Fund allocated \$1.1 billion for initial-round payments and \$1.095 billion for second-round payments. See U.S. Victims of State Sponsored Terrorism Fund, “Special Master Report Regarding the Third Distribution,” at 2 (June 2020).

⁷ See id.; U.S. Victims of State Sponsored Terrorism Fund, <http://www.usvsst.com/> (last accessed Mar. 15, 2021).

As enacted, the Terrorism Act precluded claimants (generally 9/11 victims, spouses, and dependents) who had received an award from the September 11th Victim Compensation Fund (VCF) from receiving payments from the United States Victims of State Sponsored Terrorism Fund, even if their claims were determined eligible by the Special Master.⁸ Because 9/11 family members (i.e., immediate family members of 9/11 victims who are not spouses or dependents, such as non-dependent parents and siblings) generally did not receive awards from the VCF, they were not precluded from receiving payments from the Fund if their claims were determined eligible. In 2019, the United States Victims of State Sponsored Terrorism Fund Clarification Act (Clarification Act) removed the language precluding 9/11-related claimants (i.e., 9/11 victims, spouses, and dependents) who received awards from the VCF from receiving payments from the Fund.⁹

Section 1705 of the Sudan Claims Resolution Act contains a provision for GAO to conduct an audit and publish a notice estimating potential lump sum catch-up payments to 9/11 victims, 9/11 spouses, and 9/11 dependents who have eligible claims from the Fund. Specifically, we are publishing for comment our methodology for estimating potential lump-sum catch up payments in “amounts that, after receiving the lump sum catch-up payments, would result in the percentage of the claims of 9/11 victims, 9/11 spouses, and 9/11 dependents received from the Fund being equal to the percentage of the claims of 9/11 family members received from the Fund, as of the date of enactment.”¹⁰ For the

⁸ See Pub. L. 114-113, div. O, tit. IV, 404, 129 Stat. 2242, 3010-3011.

⁹ Pub. L. 116-69, div. B, tit. VII, 1701, 133 Stat. 1134, 1140-1141.

¹⁰ 34 U.S.C. 20144(d)(4)(C)(i). Further, section 1705 provides for GAO to conduct this audit in accordance with 34 U.S.C. 20144(d)(3)(A), which generally places limits on the amount of eligible claims (referred to as “statutory caps”). For example, for individuals, the cap is generally \$20,000,000 and for claims of family members when aggregated, the cap is generally \$35,000,000. As such, we plan to utilize data from the Fund on the claim amounts after the application of statutory caps.

purpose of this analysis, “9/11 family members” are eligible claimants who received payments from the Fund in the first and second rounds of payments in 2017 and 2019, respectively; and “9/11 victims, 9/11 spouses, and 9/11 dependents” are claimants who had eligible claims (based on eligible final judgments) prior to the Clarification Act, but were precluded from receiving payments from the Fund because they had received awards from the VCF.¹¹

To estimate the amount(s) called for in the mandate, GAO plans to utilize data from the Fund on the following amounts: (1) payments received by 9/11 family members in rounds one and two; (2) net eligible claims¹² of 9/11 family members who received payments in rounds one and two; and (3) net eligible claims¹³ of 9/11 victims, spouses, and dependents. Using these amounts, we plan to calculate the percentage of 9/11 family members’ net eligible claims that were paid from the Fund in rounds one and two. We will then apply this percentage to net eligible claims of 9/11 victims, spouses, and dependents to generate the lump sum catch-up payment amount for 9/11 victims, spouses, and dependents, in an equal percentage.

After consideration of comments from this notice, we will issue a second Federal Register notice, utilizing data from the Fund to report estimated lump

¹¹ In the context of the overall statutory scheme of the Fund, the population for which we are estimating “catch-up payments” are 9/11 victims, spouses, and dependents who applied for payments in the first, second, or third round of payments from the Fund; whose final judgment date was prior to the close of the application period for the second round of payments (September 14, 2018); and who did not receive payments from the Fund in rounds one or two. See 34 U.S.C. 20144(c), (d)(4)(C); U.S. Victims of State Sponsored Terrorism Fund, “Special Master Report Regarding the Third Distribution,” at 2 (June 2020). According to the Fund’s June 2020 congressional report, the applications of eligible claimants who applied in rounds one or two are carried forward into subsequent payment rounds.

¹² For the purposes of our analysis, “net eligible claims” refers to the monetary amount of all eligible claims after the application of statutory caps by the Fund, if applicable. 34 U.S.C. 20144(d)(3)(A). In accordance with GAO standards, we will assess the reliability and completeness of the data from the Fund to ensure that it is appropriate for these purposes.

¹³ As discussed in footnote 11 above, a 9/11 victim, dependent, or spouse’s net eligible claim would be included if they applied for payments in the first, second, or third round of payments from the Fund; if the date of their final judgment was prior to the close of the application period for the second round of payments (September 14, 2018); and if they did not receive a payment from the Fund in rounds one or two.

sum catch-up payments based on this methodology with any changes we determine appropriate. We will again seek public comment on the second Federal Register notice.

Authority: Pub. L. 116-260, div. FF, tit. XVII, 1705, 134 Stat. 1182, 3293-3294 (34 U.S.C. 20144(d)(4)(C)).

Charles Michael Johnson, Jr.,
Managing Director,
Homeland Security and Justice,
U.S. Government Accountability Office.

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